IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4799 OF 2005

Branch Manager,
Ratnagiri District Sahakari Krishi
Gramin Bahuudeshiya Vikas Bank Ltd. ..Petitioner.

Vs.

Namdeo Ganpat Shetye & Ors. ..Respondents.

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Mr. R.R. Bhatkar for the Petitioner.
Mr. Anoop Sharma for Respondent No.1.

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CORAM: DR. D.Y. CHANDRACHUD, J.

7th June, 2006.

P.C. :

1. The First Respondent is the Original Plaintiff in a suit which was instituted against the Second Respondent and the Branch Office of the Second Respondent at Ratnagiri for the recovery of an amount of Rs.1,26,542/- as and by way of arrears of rent. The First Respondent claims to be the owner of certain immovable property bearing House No.2824 A admeasuring 2544 sq. ft. at Ratnagiri. The plaint proceeded on the basis that an agreement was entered into on 4th July, 1989 with the branch office of the Second Respondent, by which the premises were agreed to be taken on tenancy with effect from 1st September, 1989. The

claim in the suit was for the recovery of the rent for the period from 1st September, 1989 to 31st October, 1990 together with municipal taxes and electricity charges.

2. The Defendants in the suit were the Branch Manager of Maharashtra Rajya Sahakari Krishi & Gramin Vikas Bank Limited while the President of the Bank was impleaded as the Second defendant. The Learned Trial Judge has held that the claim in the suit was not substantiated. The Trial Court dismissed the suit by its judgment and order dated 14th November, 2000.

3. An appeal was filed by the First Respondent before the District Court and it has been stated that during the pendency of the appeal, the Petitioner was impleaded as party Respondent No.1 by amendment. The appeal was allowed by the District Judge at Ratnagiri and a decree was passed by an order dated 17th September, 2004. The operative order reads thus :

> "1] The appeal is partly allowed with proportionate costs throughout against Respondent No.1.
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> 2] The judgment and decree passed by the Trial Court stands set aside.
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> 3] The Defendant No.1 do pay an amount of

Rs.71,532/- together with future interest @ 6% p.a. on it, from the date of filing of the suit till realization of the whole amount to the Plaintiff.

4] Respondent / Defendant No.2 do bear his own cost of suit and appeal.

5] Decree be drawn up accordingly."

3. The ground that has been urged in the Petition is that during the pendency of the civil appeal before the District Court, the State of Maharashtra by a Government Resolution dated 3rd December, 1999 established 29 new District Co-operative Banks and the Petitioner came into existence on 27th September, 2001. The grievance of the Petitioner is that no notice was issued to it under Section 164 of the Maharashtra Co-operative Societies Act, 1960 and treating the Petitioner as a Branch Office of the Second Respondent, a decree came to be passed against the Petitioner. The contention of the Petitioner is that it is a completely independent establishment and that it has no liability to meet the dues of the original Defendants to the suit.

4. Counsel appearing for the Original Plaintiff, the First Respondent does not dispute the position that the judgment of the

District Court that is impugned in these proceedings does not enter any finding at all on the question as to whether the Petitioner was liable to meet the dues of Maharashtra Rajya Sahakari Krishi & Gramin Vikas Bank Limited. The order of the Appellate Court is not free of ambiguity. The appeal has been allowed with costs, against Respondent No.1 to the appeal, the Petitioner. The decree for Rs.71,532/- with interest is against Defendant No.1. The judgment adverts to parties according to the array of parties in the suit. Defendant No.1 is the Branch Manager of the Maharashtra Rajya Sahakari Krishi & Gramin Vikas Bank Limited. If that be so, there was no reason to allow the appeal against Respondent No.1 to the appeal (namely, the Petitioner). In these circumstances, it would be only appropriate and proper if the judgment and order of the District Court that is impugned in these proceedings is set aside and the matter is remitted back for fresh decision. Accordingly, in order to facilitate a fresh determination, in so far as the liability of the Petitioner is concerned, the impugned order of the Joint District Judge at Ratnagiri dated 17th September, 2004 is quashed and set aside qua the Petitioner. The Petition is accordingly disposed of. There shall be no order as to costs.